

OTHER - SUPREME COURT, U. S.
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. [REDACTED] 112

W. E. FLOYD, MRS. J. A. WINANS, Independent Executrix of the Estate of J. E. Winans, deceased, and for herself and as next friend for Norma Mae Winans, a minor, Mary Sue Winans Wharton, joined by her husband W. W. Wharton, Mildred Louise Miller, joined by her husband, James Miller.

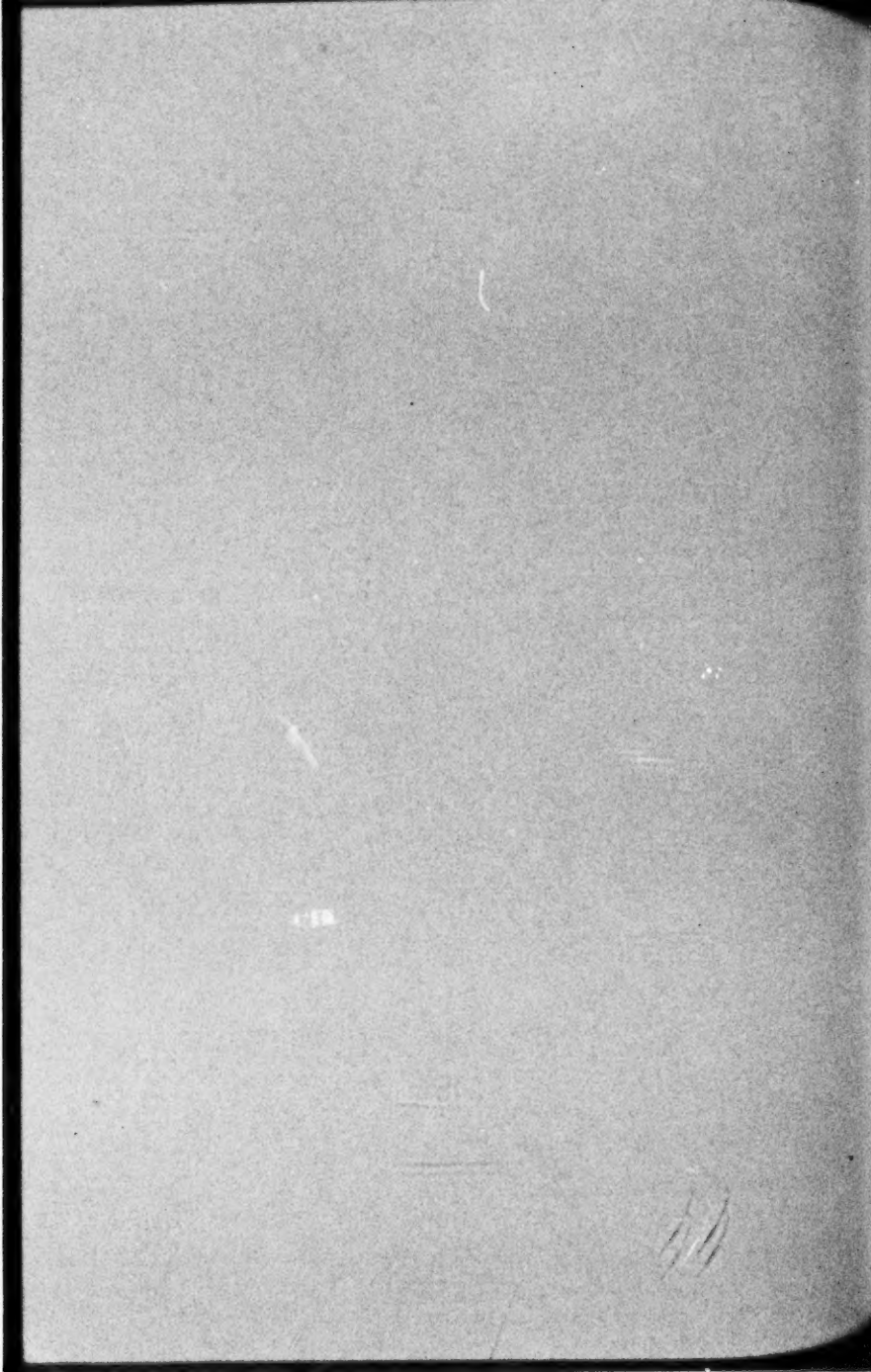
Petitioners.

vs.

J. T. EGGLESTON, I. N. BURNETT, C. E. DEATON, ABE KAUFMAN, CHARLES ANDERSON and wife MATTIE ANDERSON, VIRGIE BANKS and husband, C. C. BANKS, Charles ANDERSON and C. C. BANKS as administrators of the Estate of U. S. Jones, Deceased, D. G. Pepper and wife Margaret E. Pepper, Continental State Bank of Big Sandy, Texas, Amerada Petroleum Corporation, and Stanolind Pipe Line Company.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE 8th SUPREME JUDICIAL DISTRICT OF TEXAS AT EL PASO.

CRAMPTON HARRIS,
Counsel for Petitioners.



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SUPREME COURT OF THE UNITED STATES

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No.

W. E. FLOYD, et al,

Petitioners,

vs.

J. T. EGGLESTON, et al.

PETITION FOR WRIT OF CERTIORARI

May it Please the Court:

Now come W. E. Floyd, Mrs. J. A. Winans, Independent executrix of the estate of J. E. Winans, deceased, and for herself and as next friend for Norma Mae Winans, a minor, Mary Sue Winans Wharton, joined by her husband, W. W. Wharton, Mildred Louise Miller, joined by her husband, James Miller, and petition this Honorable Court for a writ of certiorari to the Court of Civil Appeals of Texas at El Paso and in support of said petition respectfully show the following:

A.

Summary Statement of Matter Involved

1. The facts underlying this case are set forth in an opinion dated March 23, 1938 of the Commission of Ap-

peals of Texas, Section B, which opinion was adopted by the Supreme Court of Texas, appearing in 114 S. W. (2d) pages 530-533:

"On March 19, 1932, after trial with a jury, judgment was rendered in a cause pending in the district court of Gregg county for the One Hundred Twenty-Fourth judicial district in favor of Continental State Bank of Big Sandy, plaintiff, and Amerada Petroleum Corporation, intervener, against D. G. Pepper and wife, Margaret E. Pepper, J. T. Eggleston, U. S. Joines, Charles Anderson, and Abe Kaufman, defendants, and W. E. Floyd and J. E. Winans, interveners, for the title and possession of a tract of 100 acres of land in Gregg county and canceling and holding for naught all claims to the land asserted by the defendants and the interveners, Floyd and Winans. The two interveners last named filed a motion for new trial, which was overruled, but did not appeal. On the as it denied recovery to the appellants Eggleston, Joines, Anderson and Kaufman, the Court of Civil Appeals reversed the trial court's judgment in so far as it denied recovery to the appellant's Eggleston, Joines, Anderson, and Kaufman, and rendered judgment in their favor for the mineral interests claimed by them. *Pepper v. Continental State Bank of Big Sandy*, 60 S.W. 2nd 1089. The judgment of the Court of Civil Appeals was reversed and that of the trial court was affirmed by this court on June 16, 1937. 106 S.W. 2nd 654.

"The principal issue in the case was as to the validity of a trustee's sale of the land made April 3, 1928, to Continental State Bank of Big Sandy at a time when the title, subject to the lien, was in Pepper and wife. Two attacks, among others, made by Pepper and wife, and those holding under them, upon the title of Continental State Bank as purchaser at the trustee's sale were: First, that the sale was invalid for failure to comply with certain formalities; and second, that the

bank prior to the trustee's sale agreed with Pepper and wife that the sale was to be made, not for the purpose of divesting title, but solely to satisfy a bank examiner with respect to the note, and that thereafter Pepper and wife should retain the land or reacquire title by continuing to make payments to the bank of the amounts due on the note. *The jury in answer to special issues found that it was not agreed that the sale would be a mere formality for the purpose of satisfying a bank examiner, and that it was agreed that Pepper might reacquire the land by payment of the amount of money due the bank. It further found that Pepper did not make the payments to the bank and that after the trustee's sale he moved off the land and abandoned the intention of making the payments.* The trial court's judgment sustained the validity of the trustee's sale and the bank's unqualified ownership of the land thereunder. That judgment, as has been said, was affirmed by this court. (Emphasis supplied).

"Secondary issues arose out of a controversy between Eggleston, Joines, Anderson and Kaufman, on the one hand, and Floyd and Winans, on the other, as to the ownership under Pepper and wife of the oil, gas, and other mineral rights in the land. Eggleston and his associates claimed under an oil and gas lease and a mineral deed executed by Pepper and wife on March 16 and March 27, 1931. Floyd and Winans claimed under written contract executed August 4, 1931, by which Pepper and wife agreed to lease the land to them for oil and gas and to transfer to them an undivided one-half interest in the oil, gas, and other minerals. Allegations were made that Eggleston perpetrated a fraud upon Pepper in procuring the execution of the oil and gas lease and mineral deed under which he, Joines, Anderson and Kaufman, claimed, and that Floyd and Winans by means of fraudulent representations induced Pepper and wife to execute the contract in their favor for the mineral rights. *The jury's verdict on these secondary issues was favorable to Eggleston and his as-*

sociates and unfavorable to Floyd and Winans." (Emphasis supplied).

The case to which this opinion refers was known as Case number 7709 in the District Court of Gregg County for the One Hundred and Twenty-Fourth Judicial District. That case traveled through the Court of Civil Appeals of Texas (60 S.W. 2nd 1089), to the Supreme Court of Texas (106 S.W. 2nd 654) where the judgment of the trial court was affirmed.

2. Thereafter several bills of review were filed by your petitioners in the District Court of Gregg County, Texas, seeking to set aside the judgment in the original case on the grounds of perjury and intimidation of witnesses. As a result of these several bills of review an original proceeding was instituted in the Supreme Court of Texas by the Continental State Bank of Big Sandy, Texas and others against your petitioners, seeking a writ of prohibition prohibiting your petitioners from further proceeding with their several bills of review. The writ of prohibition was granted by the Supreme Court of Texas, (114 S.W. 2nd 530) restraining your petitioners from further proceeding with their several bills of review "and from further interference with or hindrance of the judgment of this court entered on January 16, 1937 in *Continental State Bank of Big Sandy, et al vs. D. G. Pepper, et al*, 106 S.W. 2nd 654".

3. The opinion of the Supreme Court of Texas granting the petition for the writ of prohibition was rendered on or about March 23, 1938. On April 7, 1938 your petitioners filed a motion for rehearing. This motion was overruled on April 27, 1938. On April 21, 1938, one week before the motion for rehearing was overruled, your petitioners discovered for the first time that in the original trial of the case of *Continental State Bank of Big Sandy, Texas vs.*

Pepper two of the jurors trying said case were bribed by the Continental State Bank of Big Sandy, Texas or their agents to render a verdict in favor of the said Continental State Bank of Big Sandy, Texas.

4. On June 23, 1938 your petitioners filed a new bill of review in the One Hundred and Twenty-Fourth District Court of Gregg County, Texas to set aside the verdict rendered by the said bribed jury. Your petitioners alleged, for the first time, and stood ready to prove the bribery of the two jurors by the Continental State Bank of Big Sandy, Texas or its agents. (R. p. -----).

5. In August 1938 Continental State Bank of Big Sandy, Texas and Amerada Petroleum Corporation filed a motion to dismiss in said cause, setting up as grounds therefor that the prosecution and trial of this cause would be in direct conflict with and disobedience of the aforesaid writ of prohibition and that your petitioners had been guilty of laches in not presenting their charges of bribery earlier. (R. p. -----) The motion was heard on the 9th day of September, 1938 and the trial court dismissed the bill of review, holding that it was in conflict with the writ of prohibition but declining to hold that your petitioners had been guilty of any laches in setting up the allegations of bribery as a ground for setting aside the aforesaid judgment. (R. p. -----)

6. Your petitioners appealed to the Court of Civil Appeals of Texarkana, Texas and the case was transferred to the Court of Civil Appeals for the Eighth Supreme Judicial District at El Paso, Texas, which court, on the 12th day of October, 1939, affirmed the judgment of the trial court. This opinion is reported in 137 S.W. (2nd) page 182. That court held that "an injunctive writ issued by the Supreme Court, not void must